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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/600,505

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EXAMINER

KARDOS, NEIL R

ART UNIT

PAPER NUMBER

3623

MAIL DATE

DELIVERY MODE

07/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/600,505	Applicant(s) ELKINS ET AL.	
	Examiner Neil R. Kardos	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is a **FINAL** Office action on the merits in response to Applicant's remarks filed on March 31, 2008. Claims 1, 2, 8, and 9 have been amended. Currently, claims 1-9 are pending and have been examined.

Remarks

2. Claim Objections

Applicant's amendments to claims 1, 8, and 9 are sufficient to overcome the rejections set forth in the previous Office action. Thus, these objections are withdrawn.

3. Rejection under 35 U.S.C. § 112

Applicant's arguments are sufficient to overcome the rejections under 35 U.S.C § 112 set forth in the previous Office action. Thus, the previous rejection is withdrawn. However, Applicant's amendments have necessitated a new grounds of rejection under 35 U.S.C. § 112, set forth below.

4. Rejection under 35 U.S.C. § 101

Applicant's amendments are sufficient to overcome the rejections under 35 U.S.C. § 101 set forth in the previous Office action. Thus, this rejection is withdrawn.

5. Rejection under 35 U.S.C. § 102 and § 103

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection laid out below are necessitated by Applicant's amendments.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 4, and 5: In claim 1 as originally filed, step (b) recites *calculating location availabilities for manufacturing*. The currently amended claim uses the same language in step (b), but in steps (f) and (g), the claim makes reference to *calculated local availabilities*. It is not clear how these limitation should be interpreted. A *location availability for manufacturing* seems to refer to existing or potential sites for a manufacturing facility, whereas a *local availability* seems to indicate how much of a product can be manufactured at a particular facility. Claims 4 and 5 also recite *calculating location availabilities for manufacturing*, and are rejected for similar reasons

The recitation of *calculated local availabilities* in claim 1 also lacks antecedent basis because it is not clear whether it is referring to *location availabilities* or a new limitation.

Claim 1: Furthermore, it is not clear from the language of claim 1 how the claimed *forecast contribution margin* is different from an the claimed *actual contribution margin*. The

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amended language recites that both of these calculations are based on *forecast and actual production of components*. In particular, it is not clear how forecasted production would be used to calculate an actual contribution margin.

Claim 2: The limitations of this claim are unclear. Given the broadest reasonable interpretation, *acquiring data on one of a manufacturing site inside the organization, and a manufacturing site outside the organization* could mean acquiring data solely on a site inside the organization OR solely on a site outside of the organization. It could also mean acquiring data from at least one site inside the organization AND at least one site outside the organization (the latter of which Applicant appears to be arguing on page 9 of the response).

Claim 7: Claim 7 recite *actual contribution margin for each assembly plant*. Part of this language was amended out of claim 1, and there is not longer any antecedent basis for this limitation in the claim.

Claims 2-9: The dependent claims are also rejected for failing to remedy the deficiencies of claim 1.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Risk Analysis Techniques” by Geoffrey H. Wold and Robert F. Shriver, published in the**

***Disaster Recovery Journal*, Vol. 7, No. 3, available at www.drj.com/new2dr/w3_030.html and accessed via the WayBack machine at www.archive.org on February 6, 1998 (“Wold”) in view of “A Multicontribution Activity-Based Income Statement” by Ali, published in the *Journal of Cost Management* in Fall 1994, pages 45-54 (“Ali”).**

Claim 1: Wold discloses a method for evaluating an organization’s institutional risk, comprising the steps of:

- a) acquiring data with respect to a manufacturing system having a plurality of manufacturing plants, logistics routes, and transportation methods (see bottom of page 2, disclosing including all locations and facilities in the risk analysis; see also the different threats discussed on page 2, relating to plants, logistics routes, and transportation methods);
- h) conducting an evaluation as to property loss risks measures (see weighted risk rating on page 3); and

Wold does not explicitly disclose calculating a facility-level contribution margin based on availabilities and production mixes (steps b-g). Wold also does not explicitly disclose using the contribution margin to evaluate property loss risks measures (step h). However, Wold does disclose using financial measures in an evaluation of property loss risk (see e.g. items 7, 9, and 10 on pages 4-5; specifically item 9h, “loss of income” and item 10, “potential losses”).

Ali teaches calculating the contribution margin for a facility based on the specifics of the facility, including products produced there (see contribution levels on pages 2-3; table on pages 3-4). Ali also teaches using the contribution margin to determine the profitability of a facility (see page 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Ali to determine a contribution margin as the basis for a facility's profitability, and to use the facility's profitability to determine the impact of facility loss when conducting a risk analysis as disclosed by Wold. This combination of known elements produces a result that would be predictable to one of ordinary skill in the art (e.g. using a contribution margin as a basis for profitability in a business interruption risk analysis).

Wold also does not explicitly disclose producing a risk classification map. However, Wold does disclose combining risk severity and probability to determine an overall indication of the risk (see bottom of page 3).

Examiner takes Official Notice that it was well-known in the arts at the time the invention was made to plot data on graphs in order to visualize relationships between the data.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to plot the risk probability and risk severity disclosed by Wold on a graph according to well-known methods. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiencies gained by being able to easily visualize relationships between data.

Claim 2: Wold discloses wherein acquiring data is acquiring data on one of a manufacturing site inside the organization, and a manufacturing site outside the organization (see page 2, "Risk Analysis Process", disclosing determining threats that could arise inside or outside the organization).

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Claim 3: Wold discloses wherein acquiring data is acquiring data from one of a rail line or port of entry for components (see page 2, “Risk Analysis Process”, disclosing proximity to transportation routes, as well as vehicle crashes and airport proximity).

Claims 4-5: Wold does not explicitly disclose where calculating location availabilities for manufacturing is calculating excess capacity or the carrying cost of excess capacity.

Ali teaches considering excess capacity and excess capacity costs when calculating a facility-level contribution margin (see top of page 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the risk analysis of Wold the excess capacity considerations (which are incorporated into the contribution margin calculations) taught by Ali. One of ordinary skill in the art would have been motivated to do so for the benefit of a more accurate determination of contribution margin.

Claim 6: Wold discloses wherein calculating location availabilities for manufacturing is one of calculating the cost to mitigate risks by the purchasing of insurance and calculating the cost to mitigate risks by using multiple component suppliers (see pages 6-7).

Claim 7: Wold does not explicitly disclose wherein calculating actual contribution margin for each assembly plant is one of calculating actual contribution margin for each assembly plant with no business resumption or calculating actual contribution margin for each assembly plant with no mitigation effort.

Ali teaches calculating the contribution margin for a facility based on the specifics of the facility without considering any mitigation effort or business resumption (see contribution levels on pages 2-3; table on pages 3-4). Ali also teaches using the contribution margin to determine the profitability of a facility (see page 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teachings of Ali to determine a contribution margin as the basis for a facility's profitability, and to use the facility's profitability to determine the impact of facility loss when conducting a risk analysis as disclosed by Wold. This combination of known elements produces a result that would be predictable to one of ordinary skill in the art (e.g. using a contribution margin as a basis for profitability in a business interruption risk analysis).

Claim 8: Wold discloses wherein the evaluation is conducted based on one of total vehicles lost (see at least 9d on page 4, "loss of assets") and total number of sites impacted (see e.g. item 7e on page 4, "Facility damage"). See rejection of claim 1 for how the combination of Wold and Ali teach conducting an evaluation as to contribution margin lost.

Claim 9: Wold discloses rating the property locations based on a property loss risks measures (see bottom of page 2).

Additional Prior Art

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- U.S. pre-grant publication number 2003/0149657 to Reynolds et al, directed to measuring and managing operational risk
- U.S. pre-grant publication number 2004/0054563 to Douglas, directed to managing enterprise risk
- U.S. pre-grant publication number 2004/0059589 to Moore et al, directed to risk management

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil R. Kardos whose telephone number is (571) 270-3443. The examiner can normally be reached on Monday through Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Van Doren can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neil R. Kardos
Examiner
Art Unit 3623

NRK
6/24/08
/Jonathan G. Sterrett/
Primary Examiner, Art Unit 3623